IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 503 OF 2006

PIEDADE AFONSO AND 2 ORS., ...Petitioners

Versus

VISHNU GOVIND NAIK PANVELKAR(SIN.DEC.) THROUGH HIS LEGAL HEIRS ....Respondent

Mr. E. Dias, Advocate for the Petitioners.

Ms. D. Bodke For Resps.

Coram:- J. N. PATEL, J.

Date:- 20th December, 2006

P.C.:

Heard.

The petitioners who are the Judgment Debtors have impugned the Order passed by the Civil Judge J.D., Panaji on 21st September, 2006 dismissing their application for setting aside the execution.

It is the case of the petitioners that the suit structure is part of the dwelling house of which admittedly they are mundkars as it is within 300 metres of the surrounding area of their dwelling house.

Another contention is that the petitioners have initiated proceedings before the Mamlatdar under the Mundkars Act, 1975 to claim right of mundkar on the suit land and therefore the decree cannot be executed.

The executing Court has arrived at a finding that the issue stands concluded including the objection raised in the execution proceedings, merely because proceedings are pending before the Mamlatdar under the

Mundkars Act, cannot bind the Civil Court in executing the decree.

The Court finds that the suit was filed against the petitioners by the respondent/decree holder having noticed that the petitioners have encroached upon the part of the land beyond their dwelling house. It is not in dispute that the petitioners were duly served with summons. Petitioners/original defendants chose not to contest the suit and it was decreed. It is subsequently after the execution came to be filed that the petitioners now claim that the unauthorised structure erected on the encroached land is part of the dwelling house as defined under the Mundkars Act, 1975. The executing Court was justified in negating the application.

The learned counsel for the petitioners has tried to substantiate his contention by placing reliance on the case of The Goa Foundation v. The Goa State Coastal Zone Management Authority (2001(1) Goa. L.T. 6 and Shantaram Babani Xete Curtorkar v. Vishnu Babani Xete Curtorkar (1989 (2) Goa L.T. 167) and various provisions of the Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975. It is submitted that as the matter is pending before the Mamlatdar in respect of the suit structure, the same needs to be protected.

On facts, this Court finds that the petitioners have no case and as rightly held by the executing Court, execution of the decree cannot be stayed on this count.

Petition is therefore dismissed with costs.

J. N. PATEL, J.

sl.